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Rule 33. Interrogatories To Parties.

(a) Availability. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Answers and Objections. (1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. (2) The party answering interrogatories shall repeat each interrogatory immediately before the answer or objection. The answers are to be signed by the person making them and the objections signed by the attorney making them. (3) The party upon whom the interrogatories have been served shall serve a copy of the answers, or objections within 30 days after the service of the interrogatories, except that a defendant must serve answers or objections within 30 days after the service of the interrogatories upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29. (4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. (5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to Produce Business Records. Where the answers to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the

interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Reporter's Notes (as modified by the Court) to Rule 33: - 1. Rule 33 is similar to FRCP 33. Prior Arkansas law was governed by superseded Ark. Stat. Ann. 28-353 (Repl. 1962) which followed former FRCP 33. Although there are several wording changes from prior statutes, there is little substantive change. This rule does, however, extend the time for answering or objecting to interrogatories to 30 days or 45 days after service of summons.

2. Omitted from this rule is the language which was contained in superseded Ark. Stat. Ann. 28-355 (Repl. 1962), which provided that the number of sets of interrogatories was not limited except as may be required to protect a party. These rules do not mention the limiting of interrogatories although it is clear that under Rule 26(a), the court does have discretion to limit the use of discovery techniques. See Wright & Miller, Federal Practice And Procedure, Section 2168.

3. Rule 33(b) abolishes right to object to interrogatories because they call for conclusions or opinions. Under this rule, an interrogatory is not objectionable merely because it calls for an opinion, conclusion of law or contention. Wright & Miller, Federal Practice And Procedure, Section 2167.

4. Section (c) is intended to relieve a party from those situations where a substantial burden is placed upon the party to search through records and documents for the requested information. Under this rule, the party who propounded the interrogatories may be referred to the books and records by designation and he may be required to expend his own time and effort in seeking the information sought.

Addition to Reporter's Notes, 1982 Amendment: - The second sentence of the second paragraph of Rule 33(a) was added.

Additions to Reporter's Notes, 1984 Amendments: - Rule 33(a) is amended by changing the fourth sentence in the second paragraph to make it clear that a party responding to interrogatories must do so within 30 days after they are served or 45 days after service of the summons and complaint, whichever period is longer.

Addition to Reporter's Notes, 1992 Amendment: - Subdivisions (d) and (e), neither of which was based on the corresponding federal rule, have been deleted. Their elimination should not affect Arkansas practice in any meaningful way, since the subjects they addressed are adequately covered by other rules. See generally D. Newbern, Arkansas Practice & Procedure 17-9 (1985).

Subdivision (d) provided that a party who by interrogatory "requests copies of documents to be attached ... may be required to pay the reasonable cost of reproduction of each document." This provision allowed a party to use interrogatories for purposes of document production, despite the fact that Rule 34 specifically governs that discovery device. Under Rule 34, the requesting party may "inspect and copy" documents and must bear the expense of making copies. The party from whom discovery is sought is not required to make copies for the convenience of his opponent. See 4A Moore's Federal Practice Para. 34.19[2] & [3] (2d ed. 1992).

Under subdivision (e), a court could award costs, including a reasonable attorney's fee, to a

party who obtained a protective order on the basis of unnecessary interrogatories propounded by another party. This provision is unnecessary in light of Rules 26(c) and 37, which provide such protection against abusive use of interrogatories.

Addition to Reporter's Notes, 1997 Amendment: - Subdivision (a) of the former version of this rule has been divided into two subdivisions, and former subdivisions (b) and (c) have been redesignated as (c) and (d), respectively.

Paragraph (1) of subdivision (b) is based on the former second paragraph of subdivision (a). It emphasizes the duty of the responding party to provide full answers to the extent not objectionable. If, for example, an interrogatory seeking information about numerous facilities or products is deemed objectionable, but an interrogatory seeking information about a lesser number of facilities or products would not have been objectionable, the interrogatory should be answered with respect to the latter even though an objection is raised as to the balance of the facilities or products. Similarly, the fact that additional time may be needed to respond to some questions or parts of questions should not justify a delay in responding to those questions or portions that can be answered within the prescribed time.

Paragraph (2) is taken without change from the former second paragraph of subdivision (a). Paragraph (3) provides, in accordance with the prior version of the rule, that the court may shorten or lengthen the time for responding to interrogatories. New language expressly permits the parties to extend or shorten the response time by written agreement, a modification in discovery procedures that is permissible under Rule 29. Paragraph (4), which is new, makes clear that objections must be specifically justified and that unstated or untimely grounds for objection are ordinarily waived.

Addition to Reporter's Notes, 1999 Amendment: - Subdivision (d) has been amended by adding the last sentence. Taken from the corresponding federal rule, this provision makes clear that a party responding to interrogatories by producing business records has the duty to specify, by category and location, the records from which answers to interrogatories can be derived. Without such guidance, the burden of deriving the answers would not be substantially the same for the party serving the interrogatories as for the responding party. A similar requirement has been added to Rule 34(b).

History Text:

History. Amended February 22, 1982; amended July 9, 1984, effective September 1, 1984; amended September 28, 1992, effective January 1, 1993; amended November 18, 1996, effective March 1, 1997; amended January 28, 1999

Associated Court Rules:

Rules of Civil Procedure

Group Title:

V. Depositions and Discovery

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